

Montana Department of Natural Resources and Conservation  
Water Resources Division  
Water Rights Bureau

**ENVIRONMENTAL ASSESSMENT**  
**For Routine Actions with Limited Environmental Impact**

**Part I. Proposed Action Description**

1. Applicant/Contact name and address: Robert Utick  
PO Box 598  
East Helena, MT 59635
2. Type of action: Application to Change a Water Right 41I 30066425  
(Statement of Claim Nos. 41I 38502 & 41I 89688)
3. Water source name: Prickly Pear Creek
4. Location affected by project: The project proposes to change two historic irrigation water rights, 41I 38502 and 41I 89688, to the purpose of Marketing for Mitigation or Aquifer Recharge. The historic irrigation was in Section 6, Township (T) 10 North (N), Range (R) 2 West (W) and in Section 31, T11N, R2W, Helena Valley, Lewis and Clark County.
5. Narrative summary of the proposed project, purpose, action to be taken, and benefits: The applicant seeks to change two historic irrigation water rights to the purpose of Marketing for Mitigation or Aquifer Recharge. The applicant has severed the water rights from the historic place of use and plans to leave them instream while they are marketed for mitigation or aquifer recharge. Because the applicant does not have possessory interest in all of water right 41I 38502, the amount of water proposed to be marketed is limited to the historic flow rate of 2.31 CFS up to the historic consumptive volume associated with 41I 89688, which the Department calculated to be 75.2 AF. The proposed stream reach the applicant plans to market the flow rate and volume is from the historic point of diversion in the SESENW of Section 25, T10N, R3W, to the Black Eagle Dam on the Missouri River in the E2E2E2 of Section 6, T20N, R4E. However, the proposed reach from the point of diversion to Lake Helena, may only effectively mitigate groundwater depletions caused by local groundwater developments. The proposed reach beyond Lake Helena to Black Eagle Dam, most likely only effectively mitigate adverse effects to water rights that utilize storage for their appropriation. The DNRC shall issue a change authorization if an applicant proves the criteria in 85-2-402, MCA are met.
6. Agencies consulted during preparation of the Environmental Assessment:
  - Montana Department of Natural Resources (DNRC), Water Management Bureau- Russell Levens, Groundwater Hydrologist
  - Montana Natural Heritage Program (MTNHP)

- Montana Department of Fish, Wildlife & Parks (DFWP)
- USDA Web Soil Survey

## **Part II. Environmental Review**

### **1. Environmental Impact Checklist:**

<h2 style="text-align: center;"><b>PHYSICAL ENVIRONMENT</b></h2>
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### **WATER QUANTITY, QUALITY AND DISTRIBUTION**

**Water quantity** - Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.

*Determination:* No significant impact.

Although Prickly Pear Creek is identified by the Department of Fish, Wildlife and Parks as chronically dewatered stream, the proposed project is to leave water instream in order to market it for mitigation or aquifer recharge.

**Water quality** - Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.

*Determination:* No significant impact.

The Montana Department of Environmental Quality 303(d) list for 2020 identifies Ammonia (un-ionized) and water temperature as causes for water quality impairments for Prickly Pear Creek. However, the proposed project is to leave 2.31 CFS up to 75.2 AF of water instream in order to market it for mitigation or aquifer recharge and will not likely contribute to the existing impairments.

**Groundwater** - Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.

*Determination:* No significant impact.

Although the historic return flows may have contributed to the groundwater, due to the shallow aquifer and close proximity to Lake Helena, most of the return flow ended up in drain ditches and intermittent drainages. Therefore, groundwater levels will not likely be affected by ceasing irrigation on the historic place of use.

**DIVERSION WORKS** - Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.

*Determination:* No significant impact.

The proposed use is to leave water instream for marketing for mitigation or aquifer recharge purposes and no diversion will take place.

#### **UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES**

**Endangered and threatened species** - Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any “species of special concern,” or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or “species of special concern.”

*Determination:* No significant impact.

The Montana Natural Heritage Program identified 31 animal species of concern in the vicinity of the historic place of use. The animal species of concern are: **Bobolink** (*Dolichonyx oryzivorus*), **Great Blue Heron** (*Ardea herodias*), **Hoary Bat** (*Lasiurus cinereus*), **Lewis's Woodpecker** (*Melanerpes lewis*), **Veery** (*Catharus fuscescens*), **Spotted Bat** (*Euderma maculatum*), **Northern Goshawk** (*Accipiter gentilis*), **Black-billed Cuckoo** (*Coccyzus erythrophthalmus*), **Golden Eagle** (*Aquila chrysaetos*), **Long-billed Curlew** (*Numenius americanus*), **Burrowing Owl** (*Athene cunicularia*), **Pinyon Jay** (*Gymnorhinus cyanocephalus*), **Black-necked Stilt** (*Himantopus mexicanus*), **Peregrine Falcon** (*Falco peregrinus*), **Evening Grosbeak** (*Coccothraustes vespertinus*), **Caspian Tern** (*Hydroprogne caspia*), **Common Tern** (*Sterna hirundo*), **Varied Thrush** (*Ixoreus naevius*), **White-faced Ibis** (*Plegadis chihi*), **Black-crowned Night-Heron** (*Nycticorax nycticorax*), **Black-tailed Prairie Dog** (*Cynomys ludovicianus*), **Franklin's Gull** (*Leucophaeus pipixcan*), **Forster's Tern** (*Sterna forsteri*), **Black Tern** (*Chlidonias niger*), **Gray-crowned Rosy-Finch** (*Leucosticte tephrocotis*), **American White Pelican** (*Pelecanus erythrorhynchos*), **Clark's Grebe** (*Aechmophorus clarkii*), **Common Loon** (*Gavia immer*), **Horned Grebe** (*Podiceps auritus*), **Westslope Cutthroat Trout** (*Oncorhynchus clarkii lewisi*)

Since the proposed project is to leave water instream in order to market it for mitigation or aquifer recharge, any species of concern within the proposed stream reach are not likely to be impacted.

**Wetlands** - Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.

*Determination:* No significant impact.

The proposed project does not involve wetlands.

**Ponds** - For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.

*Determination:* The proposed project does not involve ponds.

**GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE** - *Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.*

*Determination:* No significant impact.

The water right proposed to be changed was severed from the historic place of use and the applicant, therefore, does not have control how the land will be utilized in the future.

**VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS** - *Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.*

*Determination:* No significant impact.

The water right proposed to be changed was severed from the historic place of use and the applicant, therefore, does not have control how the land will be utilized in the future.

**AIR QUALITY** - *Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.*

*Determination:* No significant impact.

There will be no change in air quality with the proposed project.

**HISTORICAL AND ARCHEOLOGICAL SITES** - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project if it is on State or Federal Lands. If it is not on State or Federal Lands simply state NA-project not located on State or Federal Lands.*

*Determination:* N/A, the project is not located on State or Federal land.

**DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY** - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

*Determination:* No additional impacts on environmental resources of land, water and energy were identified.

<b>HUMAN ENVIRONMENT</b>
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**LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS** - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

*Determination:* No significant impact.

**ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES** - Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.

*Determination:* No significant impact.

**HUMAN HEALTH** - Assess whether the proposed project impacts on human health.

*Determination:* No significant impact.

**PRIVATE PROPERTY** - Assess whether there are any government regulatory impacts on private property rights.

Yes\_\_\_ No X If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

*Determination:* The project does not impact government regulations on private property.

**OTHER HUMAN ENVIRONMENTAL ISSUES** - For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.

*Impacts on:*

- (a) Cultural uniqueness and diversity? No impacts identified.
- (b) Local and state tax base and tax revenues? No impacts identified.
- (c) Existing land uses? The water rights proposed to be changed were severed from the historic place of use and the applicant does not have control of the existing land use. However, Montana Cadastral website has the property associated with the historic place of use classified as Farmstead Rural.
- (d) Quantity and distribution of employment? No impacts identified.
- (e) Distribution and density of population and housing? No impacts identified.
- (f) Demands for government services? No impacts identified.
- (g) Industrial and commercial activity? No impacts identified.
- (h) Utilities? No impacts identified.
- (i) Transportation? No impacts identified.
- (j) Safety? No impacts identified.
- (k) Other appropriate social and economic circumstances?

**2. Secondary and cumulative impacts on the physical environment and human population:**

Secondary Impacts No secondary impacts have been identified.

Cumulative Impacts No cumulative impacts have been identified.

3. ***Describe any mitigation/stipulation measures:*** The proposed project is to leave water instream in order to market it for mitigation or aquifer recharge.
4. ***Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider:*** No human/environmental impacts are recognized as a result of the proposal to market the water for mitigation or aquifer recharge. The no action alternative would result in the denial of the Application to Change a Water Right.

### *PART III. Conclusion*

1. ***Preferred Alternative:*** As proposed. No significant impacts exist that would require an alternative action.

2 ***Comments and Responses:*** None at this time.

3. ***Finding:***  
Yes\_\_\_ No X *Based on the significance criteria evaluated in this EA, is an EIS required?*

*If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:* An EA is the appropriate level of analysis for this action. There are no significant impacts identified as defined in ARM 36.2.524, therefore an EIS is not required.

*Name of person(s) responsible for preparation of EA:*

*Name:* Kristeen Wofford

*Title:* Water Resource Specialist

*Date:* March 16, 2022